



Public Employees for Environmental Responsibility

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April 8, 2019

U.S. Environmental Protection Agency
Region 4 Freedom of Information
SNAFC Bldg., 61 Forsyth Street., S.W., 9th Floor
Atlanta, GA 30303-8960

Filed at: <https://www.foiaonline.gov/foiaonline/action/public/request>

Re: FOIA Request—NPDES Permit Number NPDES Permit Number FL0020940
Permittee: City of City of Tampa, Utility Services Department

Dear Sir or Madam:

Pursuant to the Freedom of Information Act, 5 U.S.C. 552, as amended, Public Employees for Environmental Responsibility (PEER) requests the following documents:

1. All inspections of the City of Tampa (City of Tampa or Tampa), Howard F. Curren wastewater treatment facility (Facility) conducted by the EPA and/or the Florida, Department of Environmental Protection (FDEP) and/or Hillsborough County, FL (Hillsborough County) from January 1, 2014, to the present;
2. All enforcement actions taken by the EPA and/or the FDEP and/or Hillsborough County against the Facility from January 1, 2014, to the present;
3. All complaints (both written and electronic) received from citizens concerning the operation of the Facility between January 1, 2014, to the present;
4. All correspondence (both written and electronic) from January 1, 2014, to the present between the EPA and the FDEP and/or Hillsborough County concerning the Facility's NPDES Permit Number FL0020940 (Permit);
5. All correspondence (both written and electronic) between the EPA and/or the FDEP and/or Hillsborough County, FL and/or Tampa concerning the Facility's compliance status between January 1, 2014, to the present;
6. All documents related to PEER's February 4, 2019, petition (Overfile Petition) to EPA's Region 4 requesting that EPA exercise its authority to investigate the lack of enforcement of the Permit. This request includes, but is not limited to:
 - a. All correspondence (both written and electronic) between EPA and the FDEP related to PEER's Overfile Petition;

- b. All correspondence (both written and electronic) between EPA and Hillsborough County, Florida related to PEER's Overfile Petition;
- c. All correspondence (both written and electronic) between EPA and the City of Tampa related to PEER's Overfile Petition;
- d. All correspondence (both written and electronic) between EPA and third parties not identified above related to PEER's Overfile Petition;
- e. All inspections conducted by EPA and/or the FDEP and/or Hillsborough County, FL in response to PEER's Overfile Petition;
- f. All findings associated with all inspections conducted by the EPA and/or the FDEP and/or Hillsborough County, FL in response to PEER's Overfile Petition;
- g. All memoranda and emails associated with PEER's Overfile Petition.

PEER's Overfile Petition asked EPA to (a) investigate this lack of enforcement by the FDEP and to (b) initiate enforcement of said Permit because of the myriad violations known to exist and to (c) assume primary permitting and enforcement oversight over the Permit because of the FDEP's failure to properly administer the same.

For any documents or portions of documents that you block release due to specific exemption(s) from the requirements of the Freedom of Information Act, please provide an index itemizing and describing the documents or portions of documents withheld. The index should, pursuant to the holding of Vaughn v. Rosen (484 F.2d 820 [D.C. Cir. 1973] cert. denied, 415 U.S. 977 [1974]), provide a detailed justification for claiming a particular exemption that explains why each such exemption applies to the document or portion of a document withheld.

To the extent that EPA needs to perform a detailed review, PEER requests that all fees be waived because "disclosure of the information is in the public interest . . . and is not primarily in the commercial interest of the requestor" (5 U.S.C. 552 (a) (4)(A)):

1. The subject matter of the requested records must specifically concern identifiable operations or activities of the government.

The FOIA request is, by its terms, limited to identifiable activities of EPA, its delegated programs and its employees.

2. For the disclosure to be "likely to contribute" to the understanding of specific government operations or activities, the releasable material must be meaningfully informative in relation to the subject matter of the request.

PEER is seeking this information in order to evaluate and investigate EPA's performance and the performance of the FDEP in administering the federal NPDES program. Release of the requested information is in the interest of the general public, in order for the public to understand both the City of Tampa's environmental performance under the Permit, as well as to understand the nature of the FDEP's administration of said Permit and EPA's oversight of the FDEP.

3. The disclosure must contribute to the understanding of the public at large, as opposed to the understanding of the requestor or a narrow segment of interested persons.

Disclosure of the above requested information is in the public interest because disclosure would contribute significantly to the public's understanding of both the FDEP's administration of the NPDES program and the manner in which the EPA exercises its oversight responsibilities of said program. At present there are myriad efforts devoted to restoration of Florida's surface waters in part by improving permit restrictions on NPDES discharges. But there are also significant efforts underway that are designed to interfere with said restoration by way of reducing regulatory oversight. In order to fully appreciate the gravity of these issues it is critical for the public to understand the current state of Florida's enforcement of the NPDES program and the practical results of allowing permittees such as the City of Tampa to operate with only token regulatory oversight.

PEER intends to provide the requested information to the general public through —

- Release to the news media;
- Posting on PEER's web page which draws between 1,000 and 10,000 viewers per day; and
- Publication in PEER's newsletter that has a circulation of approximately 20,000, including 1,500 environmental journalists.

As the Agency well knows from past direct experience, PEER has a long track record of attracting media and public attention to the internal records of federal agencies. For example, in 2010 PEER has released information regarding what it perceives to be the FDEP's failure to require the City of Boca Raton, FL to abide by its NPDES Permit issued pursuant to the CWA. In the released information PEER alerted the public to its Overfile Petition.

4. The disclosure must contribute "significantly" to public understanding of government operations or activities.

While it is difficult to warrant in advance to seeing it just how significant the information will be to the general public, the nature of the information should shed some direct light on the manner in which the administration of the NPDES Program in Florida is carried out, because it sheds direct light on the FDEP's enforcement of a specific NPDES permit, as well as the permittee's compliance (or lack thereof) with said Permit. The information should likewise educate the public on the seriousness with which the EPA approaches its responsibility under the CWA to ensure that the CWA is actually enforced in the states. This, in turn, enables the public to gain an understanding into which facilities in the state are chronically violating their permits. The public, armed with this information, can then bring attention to the identified problems and seek to require agency officials, and elected officials, to enforce the requirements of the CWA. If the EPA is not willing to force the states to properly administer the CWA when the states such as Florida are given federal grant money for the same, the public should know this.

5. The extent to which disclosure will serve the requestor's commercial interest.

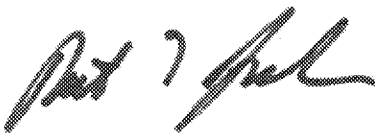
Disclosure is in no way connected with any commercial interest of the requestors in that PEER is a nonprofit, nonpartisan public interest organization concerned with upholding the public trust through responsible management of our nation's resources and with supporting professional integrity within public land management and pollution control agencies. To that end, PEER is designated as a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code.

6. The extent to which the identified public interest in the disclosure outweighs the requestor's commercial interest.

As stated above, disclosure is in no way connected with any commercial interest of the requestors in that PEER is a nonprofit, nonpartisan public interest organization concerned with upholding the public trust through responsible management of our nation's resources and with supporting professional integrity within public land management and pollution control agencies. To that end, PEER is designated as a tax-exempt organization under section 501 (c) (3) of the Internal Revenue code.

If you have any questions about this FOIA request, please contact me at (202) 265-4189 or email: pjenkins@peer.org. I look forward to receiving the agency's final response within 20 working days.

Cordially,

A handwritten signature in black ink, appearing to read "Peter T. Jenkins".

Peter T. Jenkins
Senior Counsel